



CERTIFIED PUBLIC ACCOUNTANT

INTERMEDIATE LEVEL EXAMINATIONS

F.2: INTRODUCTION TO LAW

DATE: WEDNESDAY, 30 MARCH 2022

MARKING GUIDE AND MODEL ANSWERS

SECTION A

QUESTION ONE

Marking guide

(a)(i) Law and morality	Marks
• Right view	1
• Meaning of law	1
• Meaning of morality	1
• Enforcement of law and morality	1
• Examples of law and morality	1
Maximum Marks	5
(ii) Difference and similarity between law and morality	
• Nature of law and morality	1
• Purpose of law and morality	1
• Similarities between law and morality	1
• Differences between law and morality	1
• Conclusion	1
Maximum Marks	5
(b) (i) The supremacy of the constitution	
• Definition of the constitution	1
• Article of the constitution on supremacy	1
• Contents of the article of the constitution	1
• The organs of government	1
• Role of the President of the Republic	1
Maximum Marks	5
(ii) The constitution as a source of law	
• The constitution is a source of law in Rwanda	1
• The constitution is the supreme source of law	1
• Wherever there is any conflict among any other sources the constitution rains supreme	1
• The constitution and the bill of rights	1
• All laws must conform to the constitution	1
Maximum Marks	5
Total Marks	20

Model Answers

(a)(i)

- Uwintwari Nadine is right
- Law is a set of rules governing the society which are binding and are obeyed by all and those who break the law are subjected to sanctions either civil or criminal
- Morality is what is deemed right by a given society to which part of it may be overlapping the law and are enforced as law while others are mere morality and cannot be enforced and violating them does not attract any sanctions
- Legal rules are enforced in the courts. Rules of morality depend for their observance upon the good conscience of the individual and the force of public opinion
- The contents of morality and law overlap to a great extent, e g murder, theft and slander; but there are many rules of morality and ethics which the law does not seek to enforce, such as the commandment to honour our parents; and many legal rules which are not intrinsically moral, such as the husband's general liability to pay tax on his wife's income.

(ii) If you are of the opinion that there is a relationship or the difference between law and morality provide such two relationships and two differences if any.

- Law and Morality sometimes overlap for example if a person commits murder, theft, corruption etc. he/she is considered immoral but at the same time to have broken the law. Thus since they overlap morality shall be enforced as law;
- Both law and morality exist to ensure that people's behaviours are directed towards a direction which is acceptable to the society. They are both set of norms established by the society to regulate the behaviours of people in the society;
- One of the main differences between law and Morality is that law is enforced in the courts of law while morality is not enforced but only depends upon the good conscience of the individual and the force of public opinion. If a person commits theft he/she can be arrested prosecuted and imprisoned but if one breaks morality let say he/she does not respect his/her parents there are no sanctions that are imposed.
- Laws are compulsorily enforced whether they are good or not good. One does not make a decision whether to obey law or not to obey. Once laws have been passed they must be obeyed and any violations will attract sanctions either civil or criminal while that is not the case with morality since what one group of people in one society considers moral another group considers immoral and therefore they can elect to ignore some moral norms.
- Although Law and morality overlap and contribute to each other both the two concepts are totally different from each other.

(b) (i)

Gabo Velosco was right in his view that the constitution was supreme and that the President of the Republic is the creature of the constitution itself

- Article 3: Supremacy of the Constitution
- The Constitution is the supreme law of the country. Any law, decision or act contrary to this Constitution is without effect.
- Article 61: Branches of Government
- Judicial independence
- Branches of Government are the following:
 - ✓ The Legislature
 - ✓ The Executive
 - ✓ The Judiciary
- The three branches are separate and independent from each other but are all complementary.

(ii)

At the national level, the constitution is the Supreme Law.

- The constitution is a set of rules which form the fundamental law of a state with which all other laws have to be in conformity.
- This means that when there is a conflict between constitutional provisions and any other law of the country, the former prevails.
- The Constitution establishes and protects the Bill of Rights and establishes the branches of the Government (Executive, Legislative and Judiciary).
- For G. Burdeau, the constitution occupies a central place in a system of the rule of law.

QUESTION TWO

Marking guide	Marks
(a) Laws enacted by parliament	
• Organic and ordinary laws	1
• Meaning of organic law	1
• Meaning of ordinary laws	1
Maximum	3
(ii) President decree and legislation	
• Meaning of law promulgated by the president	1
• Legislation processes	1
• Circumstances under which the president make law	1
• The legal implications of the law made by the president	1
• Article of the constitution supporting the presidential decree	1
Maximum	3
(b) Administrative law and separation of powers	
• Meaning and definition of administrative law	1
• The principle of separation of powers	1
• Doctrine of separation of powers	1
• The three organs of the government	1
• Functions of each organ	1
• Complementarity of the organs	1
Maximum	6
(c)(i) Circumstances under which a foreign national can be tried under the Rwandan courts	
• Rationale under which a person can be tried in Rwanda	1
• The person to be tried must agree to be tried in Rwanda	1
• Circumstances under which a person can be tried	1
• Cases related to succession	1
Maximum	4
(ii) Specific areas that the chamber for labour and administrative cases determines	
• Individual and collective disputes	1
• Employment contracts	1
• Disputes between social security organizations	1
• Claims for damages arising out of the breach of labour laws	1
Maximum	4
Total marks	20

Model answers

(a)(i)

- Organic and ordinary laws
- Organic laws are those designated as such and empowered by the Constitution to regulate other key matters in the place of the Constitution. Some matters are devolved to the Organic laws by the Constitution
- For example elections, adding or removing an official language, Rwandan nationality, and establishment and functioning of political organizations, the conduct of their leaders and the conduct of their leaders, functioning of the Chamber of Deputies, functioning of the Senate etc.
- Ordinary laws, which commonly are referred to as the law with sovereign authority in all matters.
- They apply to all matters which mean that Parliament can pass an ordinary law for any matters.

(ii)

- The constitution of Rwanda assigns parliament with the role of enacting laws while the judiciary interprets the laws enacted and finally the executive implements the enacted laws
- In case of the absolute impossibility of parliament holding session the President of the Republic is empowered by the constitution to step in and pass a decree to fill the vacuum.
- This decree is the piece of legislation which is promulgated by the President of the Republic and adopted by the Cabinet in case of absolute impossibility of the Parliament holding session.
- A decree law has the same effect as an ordinary law but they became null and void if they are not adopted by the Parliament at its next session (Constitution of the Republic of Rwanda, Art. 92).

(b)

- Administrative Law means the law relating to public administration
- It is the law relating to the organization, composition, functioning and procedures of public authorities and special statutory tribunals, their impact on the citizen, and the legal constraints which they are subject
- Administrative Law is concerned with legal forms and constitutional status of public authorities; with their powers and duties and with the procedures followed in exercising with legal, relationships with one with the public and with their employees.
- It is that body of rules which aims at reducing the areas of conflict between the administrative agencies of the state and the individuals.
- The Administrative Law is concerned with the nature of powers of public authorities and, especially with the manner of their exercise

- The doctrine of separation of powers, suggested a pure separation of powers system. Van der Vyver, borrowing from Montesquieu, is of the opinion that separation of powers is composed of the following principles:
 - ✓ The principle of trias politica, requiring a formal distinction between the legislatures, executive and judicial branches.
 - ✓ The principle of personnel according to which the same people should not be allowed to serve more than one branch of the government at the same time. Separation of functions between the three branches to avoid one interfering with or assuming the roles of the other.
 - ✓ The principle of checks and balances that requires that each organ be entrusted with special powers designed to serve as checks on the exercise of functions by the others in order to come to an equilibrium
- In its simplicity, separation of powers denotes that power should not be vested in the hands of few, but clearly donated to three arms of government so that none should have excessive powers. Such a situation gave rise to the famous quote of Lord Atkin's that 'power tends to corrupt and absolute power tends to corrupt absolutely.'

(c)(i)

Suing foreign nationals in the Rwandan courts

- Foreign nationals may be sued in Rwandan courts if they agree to be tried in Rwanda;
- The contract from which the dispute arises was concluded, executed or must be executed in Rwanda;
- The case relates to a succession opened in Rwanda;
- The case relates to the application for the court order to validate or lift seizures carried out in Rwanda or any other application for interim or conservatory measures;
- The claim is connected to another case that is already pending before a Rwandan court;
- They seek execution in Rwanda of court decisions rendered or authentic instruments issued abroad;
- The case relates to commercial bankruptcy resulting from dishonest management and such bankruptcy is opened in Rwanda;
- There are several defendants, one of whom has domicile or residence in Rwanda;
- A ship or vessel subject to prosecution for an act committed in foreign waters is found in national waters at the time of issuance of the notice to appear;
- An aircraft subject to prosecution for an act committed in a foreign air space is found in the Rwandan air space at the time of issuance of the notice to appear.

If all the above circumstances are not sufficient to establish jurisdiction of Rwandan court over foreign nationals, the plaintiff may file a suit in a Rwandan court for the place of his/her domicile or residence or for the place of location of the subject matter.

(ii)

- The chamber for labour and administrative cases hears, at first instance, all labour and social security cases as well as cases pertaining to the following:
- Individual or collective disputes arising out of employment between private employers and their employees;
- Employment contracts, apprenticeship contracts, collective agreements or alternative administrative decisions;
- Disputes between social security organizations, between social security organizations and insurers, and between employers and employees in regard to the application of social security law;
- Claims for damages arising out of the breach of labour laws, without prejudice to the laws which confer such jurisdiction on criminal courts if a criminal action is filed in them.

QUESTION THREE

Marking guide

(a) Conservative or Progressive legal profession embracing modern technology	Marks
• Meaning of legal technology	2
• Meaning of legal tech	2
• Meaning of legal profession	2
• Conservative or progressive legal profession	2
Maximum	8
(b) International and transnational crimes under the specialized chamber of the High Court	
• Terrorism and hostage-taking;	2
• Human trafficking;	2
• Slavery and other related crimes;	2
• Torture, inhuman or degrading treatment;	2
• Crime of genocide except crimes of genocide against the Tutsi and crimes humanity perpetrated between 1st October 1990 and 31st December 1994;	2
• Crimes against humanity;	2
• War crimes;	2
• Genocide denial or revisionism;	2
Maximum	6
(c) Organization and jurisdiction of ordinary courts in Rwanda	
• Primary Court and its jurisdiction	1
• Intermediate Courts and its jurisdiction	1
• High Court and its jurisdiction	1
• Court of Appeal and its jurisdiction	1

• Supreme Court and its jurisdiction	2
Maximum	6
Total marks	20

Model answers

(a)

- ‘Legal technology’ is used to mean the use of technology and software to provide and aid legal services. Legal Technology applies technology and software to assist Law Firms in practice management, billing, big data, e-discoveries, predictive analytics, knowledge management and document storage.
- While Legal Tech is meant to enable the bigger firms improve overall efficiency in order to adapt to a progressively popular agile working environment, it also allows smaller firms and sole practitioners to compete with the leading names in the field, giving them access to powerful research tools.

Use of Legal Technology within the Legal Profession in Rwanda: Progressive or Conservative Profession?

- A broad approach to the term “Legal profession” may be used to refer to all those who are in some capacity engaged in the working of the legal system, including judges, advocates, government lawyers, prosecutors, academics, paralegals and law reformers.
- All these persons play a crucial role in administration of justice and offering legal training for capacity building in the sector
- The Government of Rwanda has continued to invest, albeit at an unsatisfactory pace, in ensuring that courts were put up across the country as the main system of access to justice.
- The legal profession has since played a major role in facilitating access to justice. However, it is not always easy for all citizens to access justice due to a myriad of challenges.
- Some of the documented challenges facing access to justice over the years include but are not limited to: legal, institutional and structural challenges; Institutional and procedural obstacles; Social barriers; and Practical and economic challenges.
- Closely related to these are high court fees, geographical location, complexity of rules and procedure and the use of legalese. These are challenges that directly impact on the general public’s ability to seek and access justice.
- These domestic challenges are compounded by economic turbulence due to societal and economic changes; adaption to new technology; compliance and ethical issues; and continuing professional development which directly impact on the legal profession especially the lawyers.
- The changing times and the above listed challenges have made clients to continue to demand efficiency and responsiveness from their lawyers for less cost.

(b)

- Terrorism and hostage-taking
- Human trafficking
- Slavery and other related crimes
- Torture, inhuman or degrading treatment
- Crime of genocide except crimes of genocide against the Tutsi and crimes humanity perpetrated between 1st October 1990 and 31st December 1994
- Crimes against humanity
- War crimes
- Genocide denial or revisionism.

(c)

- The law determining the jurisdiction of courts establishes ordinary courts and specialized courts.
- Ordinary courts are as follows:
 - ✓ Primary Court
 - ✓ Intermediate Courts;
 - ✓ High Court;
 - ✓ Court of Appeal;
 - ✓ Supreme Court.

QUESTION FOUR

Marking guide

(a)(i) Donoghue v Stevenson [1932] UKHL 100	Marks
• Nature of tort in Donoghue and Stevenson	1
• Meaning of the tort identified	1
• Circumstances under which type of the tort arise	2
• How committed the tort between the two	1
• The reason sufficient to make the company liable to compensate	1
Maximum	6
(ii) Defences available under the law of tort supported by examples	
• Force-majeure	2
• The exclusive fault of the victim or Plaintiff's negligence	2
• Consent and voluntary assumption of risk	2
• Act of God	2
Maximum	6
(b) (i) The tort of trespass	
• The meaning of trespass	1

- Was flying through the space and taking a photo is a violation of private property 1
- The act of taking the photo without permission was an infringement 1
- Flying is allowed over a person's property but taking a photo while flying through is trespass 1
- Making use of another person's property without the permission is trespass 1

Maximum 4

(ii) Vicarious liability

- This is not a case of vicarious liability 1
- According to Art. 260 (3) CC III3, 1
- This is a kind of indirect liability 1
- Conditions for the liability of a master/commettant for wrongs of a domestic and agent (worker) respectively 1

Maximum 4

Total Marks 20

Model answers

(a)(i)

- It is the tort of negligence with a possibility that in the process of reusing different bottles and they did not have regard with cleanliness and hence a snail found itself in the bottle
- Negligence means that the degree of care a reasonably prudent person would follow to prevent foreseeable harm is not followed.
- A person can be negligent if, under similar circumstances, he or she acts with less care than a reasonable one
- Glasgow Holiday shall be held responsible since McByde disputes that the bottle did not originate from him
- Glasgow Holiday shall pay for all the expenses incurred by Donoghue in the hospital where he was treated for gastroenteritis and shock

(ii)

- Case of force-majeure if it is not caused by default of maintenance or a construction defect.
- The exclusive fault of the victim or Plaintiff's negligence
- Consent and voluntary assumption of risk
- Act of God

(b) (i)

- Yes, a tort of trespass was committed because there was no permission provided while taking the photos of the plaintiff's house
- A violation in relation to a person or property is an unauthorized act
- An infringement on land involves moving on without permission or over the property of another.
- The unauthorized use of the airspace of another property as well as the actual property can also involve a failure.
- This rule, however, has been modified to allow aircraft to flow above the land so long as the proper use of the land is not interfered with.
- The use of the property of someone else without the person's consent is a breach of personal property.

(ii)

- From the facts of the case study Mr Khan did not do what he did on behalf of his employer and thus this not a case of vicarious liability
- According to Art. 260 (3) CC III3, a master/"commettant" is liable for acts of the domestic (home maid) and agent (worker), if the acts fall within the functions for which they were employed. A "commettant" is a French word meaning someone who asks another to do something on his behalf.
- This is a kind of indirect liability (for the master/commettant) because the primary liability for the acts of the domestic and agent (worker) is born by them.

Conditions for the liability of a master/commettant for wrongs of a domestic and agent (worker) respectively

- Relationship of subordination
- The fault of the domestic or agent (worker)
- The damage is supposed to be caused to a third party, that is to say, any other person other than the master/commettant
- A relationship between the act of the domestic or agent and the functions which they do e.g. A domestic who injures somebody who is near him while he is cutting a fish.

QUESTION FIVE

Making guide

	Marks
(a)(i) Defamation and privileged information	
• It is a case of defamation because the information is privileged	1
• The information was given for purposes of legal representation	1
• The law protects the information provided as in this case and such information cannot be taken as a confession	1
Maximum	3
(ii) Privileged information and confession	
• The judge cannot take the information provided as a confession	1
• The information was provided because of the relationship (advocate-client)	1
• The information given to the advocate is privy and protected by law	1
Maximum	3
(b)(i) Contract: offer and acceptance	
• The contract was not concluded and thus no contract	1
• Confirmation was to be complete acceptance	1
• Confirmation was to seal this contract was to be entered by agreement and contract through negotiation	1
Maximum	3
(ii) How contractual obligations arise	
• Agreement and contract	1
• Contract entered through promissory estoppel	1
• Standard form contract	1
Maximum	3
(c)(i) Discharge of Contract	
• Yes the contract is discharged with the payment of 75,000	1
• This is discharge by agreement	1
• The first agreement was overtaken by the second agreement	1
Maximum	3
(ii) Modes of contractual discharge	
• Discharge by impossibility or frustration	1
• Discharge by breach	1
• Discharge by performance	1
• Discharge by rescission	1

• Discharge by force-majeure	1
Maximum	5
Total marks	20

Model answers

(a)(i)

- Yes, it is a clear case of defamation
- The manner in which the information was shared was for purpose of representation before the court of law and thus the information is privy.
- The law regards this information provided as privileged and cannot be used anywhere against the very person who provided it and this cannot amount to confession.

(ii)

- The judge cannot use the confession made to the advocate to imprison John Mupenzi
- The reason why the judge cannot make use of the information provided to the advocate in his capacity as a legal practitioner representing the client based on this relationship
- The information provided to the advocate is privy and protected and therefore the judge cannot in the first place allow the advocate to say anything negative to the client he represented

(b) (i)

- The contract had not been concluded because there was need confirmation which was never made.
- There was need for the confirmation more especially on fully furnished in every department
- Because this is a contract entered through agreement and contract the last part of the negotiation was to be a conclusion

(ii)

- Agreement and contract
- Contract entered through promissory estoppel
- Standard form contract

(c)(i)

- Yes, the contract is discharged with the payment of FRW75,000
- The mode is known as discharge by agreement
- There was a contract which was categorical but after losing the job better request john to accept FRW 75,000 instead of 100,000 and John accepted and subsequently they entered into a contract to the effect of the agreement

(ii)

- Discharge by impossibility or frustration
- Discharge by breach
- Discharge by performance
- Discharge by rescission
- Discharge by force majeure

QUESTION SIX

Marking guide

(a)(i) Contract of sale of goods and duties of a seller

Marks

- | | |
|--|---|
| • Put the goods into a deliverable state | 1 |
| • Pass a good title | 1 |
| • Deliver the goods | 1 |
| • Supply goods of the right quality | 1 |
| • Supply the goods in the right quantity | 1 |

Duties of a buyer

- | | |
|--|---|
| • Take delivery | 1 |
| • Pay the price | 1 |
| • Examine the goods | 1 |
| • Communicate non-conformity to the seller | 1 |

Maximum

6

(ii) Rights of a buyer and a seller with regard to general and particular goods

- | | |
|---|---|
| • Right in personam and right in rem | 1 |
| • Seller can resale under agreement to sale and can be held responsible for breach, but the buyer cannot ownership since ownership is with the seller | 1 |
| • Under a sale, a seller cannot resale and if I can resale the buyer can claim ownership and can follow the goods | 1 |
| • In case of an agreement to sale the buyer and the seller have remedy against each other for breach | 1 |
| • An agreement to sale creates legal obligations to the two parties but not whole world but a sale goes with ownership and thus the buyer can trace the goods anywhere and everywhere | 1 |

Maximum

4

(b) (i) Obligations of an agent towards the principal and vice versa	
• Performance	1
• Obedience	1
• Care and skill	1
• Respect for principal title or estoppel	1
• Account	1
• Personal performance and non-delegation	1
• Bonafide (good faith)	1
• Keep the principal informed	1
• Secrecy/confidentiality	1
• Separate accounts	1
• Disclosure	1
Obligations of the principal towards the agent	
• Remuneration	1
• Indemnity	1
Maximum	6
(ii) Remedies available for both the agent and the principal for violating the obligations	
Remedies available to the Agent	
• Right to sue	1
• Right of lien	1
• Right of stoppage in transit	1
• Withholding the passing of property	1
Remedies of the principal	
• Dismissal	1
• Right to sue	1
Maximum	4
Total Marks	20

Model answers

(a)(i)

Duties of the Seller

- Put the goods into a deliverable state
- Pass a good title
- Deliver the goods
- Supply goods of the right quality
- Supply the goods in the right quantity

Duties of a Buyer

- Take delivery
- Pay the price
- Examine the goods
- Notify the seller of the nonconformity

(ii)

- An agreement to sell creates a right “in personam” while a sale creates a right “in rem”.
- It basically means that the seller can resale the goods after the agreement to sale and by doing so the seller shall be held responsible for breach of contract and the buyer cannot claim ownership of the goods since the ownership still remained with the seller
- To the contrary in a sale, the seller cannot resale since the title of goods were immediately transferred upon the sale and therefore the buyer can follow the goods to wherever he will find them and reclaim them
- In case of an agreement to sell the buyer and the seller get remedy against each other in case of a breach of an agreement.
- The agreement for sale creates a right with which only the contracting parties are concerned and not the whole world, whereas in case of a sale the buyer gets an absolute right of ownership and this right of the buyer is recognized by the entire world

(b)

Obligation of an agent towards the principal

- Performance
- Obedience
- Care and skill
- Respect for principal title or estoppel
- Account
- Personal performance and non-delegation
- Bonafide (good faith)

- Keep the principal informed
- Secrecy/confidentiality
- Separate accounts
- Disclosure

Obligation of the principal towards the agent

- Remuneration
- Indemnity

(c)

Remedies available to the Agent

- Right to sue
- Right of lien
- Right of stoppage in transit
- Withholding the passing of property

Remedies of the principal

- Dismissal
- Right to sue

QUESTION SEVEN

Marking guide

(a)(i) Characteristics of the contract of insurance	Marks
• Aleatory contract	2
• Utmost good faith	2
• Insurable interest	2
• Indemnity	2
• Causa proxima(approximate cause)	2
• Risk must attach	2
• Mitigation of loss	2
• Subrogation	2
• Contribution	2
Maximum	6
(ii) Main principles/characteristics at play at UPA insurance	
• Causa proxima	2
• Mitigation of loss	2
• Indemnity	2
Maximum	4

(b) (i) Types and characteristics of Negotiable instruments

- Bill of Exchange 1
- Promissory note 1
- Cheque 1

Characteristics

- A negotiable instrument is freely transferable. 1
- Negotiability confers absolute and good title on the transferee. 1
- A negotiable instrument must be in writing. 1
- In every negotiable instrument there must be an unconditional order or promise for payment. 1
- The instrument must involve payment of a certain sum of money only and nothing else. 1
- The time of payment must be certain. 1
- The payee must be a certain person. 1
- A negotiable instrument must bear the signature of its maker. 1
- Delivery of the instrument is essential. 1

Maximum 4

(ii) The Difference between a contract and a negotiable instrument

- A negotiable instrument is not a contract, as contract formation requires an offer, acceptance, and consideration, none of which is an element of a negotiable instrument. 1
- Unlike ordinary contract documents, the right to the performance of a negotiable instrument is linked to the possession of the document itself (with certain exceptions such as loss or theft). 1
- The rights of the payee (or holder in due course) are better than those provided by ordinary contracts. 1
- The rights to payment are not subject to set-off, and do not rely on the validity of the underlying contract giving rise to the debt 1
- No notice needs to be given to any prior party liable on the instrument for transfer of the rights under the instrument by negotiation 1
- Transfer free of equities—the holder in due course can hold better title than the party he obtains it from 1
- Negotiation enables the transferee to become the party to the contract, and to enforce the contract in his own name. 1

Maximum 3

(iii) The difference between a cheque and a promissory note.

- A promissory note is drawn by anyone while a cheque is drawn only on a banker. 1.5
- There are two parties in a promissory note namely the debtor namely the maker and the payee while there are three parties namely the drawer, the drawee, and the payee 1.5
- A promissory note is made by the debtor while a cheque is only drawn on a banker 1.5

• In a promissory note the amount is payable as per promise or earlier while the amount in a cheque is always payable on demand	1.5
• A promissory note is always open for negotiability, but a cheque can be crossed to end its negotiability	1.5
Maximum	3
Total marks	20

Model answers

(a)(i) From the statement above explain any three principles or characteristics of the contract of insurance.

Answer

- **Aleatory contract-:** Most contracts are cumulative i.e. each party gives up goods or services presumed to be of equal value. The insurance contract, however, is aleatory i.e. the contracting parties know that the amount to be paid by each party is not equal. In the insurance policy, the insured pays the amount of premium. If he suffers loss he may receive a much larger amount from the company than he paid in premiums, and he suffers no loss he will collect nothing.
- **Utmost good faith-:** Most ordinary contracts are bonafide or good faith contracts. Insurance contracts however are contracts uberrimae fidei or contracts of utmost good faith. It is a condition of every insurance contract that both the parties should display the utmost good faith towards each other in regard to the contract. This continues up to the time the negotiations for the contract are completed and is equally applicable to both the parties. The insured is bound to disclose all material facts known to him but unknown to the insurer. Every factor which is likely to influence the mind of the insurer in deciding whether to accept the proposal or in fixing the rate of premium is material for this purpose
- **Insurable interest-:** The insured must have an insurable interest in the subject matter insured. Without such interest the contract will be regarded as a wagering contract and thus void. It means some pecuniary interest in the subject matter of the insurance. A person has an insurable interest in the subject matter insured where he will derive pecuniary benefit from its preservation or will suffer pecuniary loss or damage from the happening of the event insured against. But mere expectation does not constitute insurable interest. Similarly, mutual love and affection is not sufficient to constitute insurable interest.
- **Indemnity-:** All contracts of insurance are contracts of indemnity except those of life assurance and personal accident insurance. It means that the assured in the case of loss against which the policy has been made shall be fully indemnified but never more than fully indemnified. It would be against public policy to allow persons who insure their goods to make any profit out of the goods insured. All policies on property are contracts of indemnity and the law would not permit them to be otherwise construed. Thus if the value of the goods insured increases after the date of the policy the insurers are not liable to make good the loss in respect of the increase in value.

- **Causa proxima:** Under the law of insurance an insured can recover from the insurer for the loss of the subject matter only if it is caused by an event insured. If there is only one cause of damage or loss, there is no difficulty in fixing the liability of the insurer. But sometimes the loss or damage results on account of a series of causes. In such a case, the principle of causa proxima is applied. By the term proximate cause is not meant the latest, i.e., proximate in time, but the direct, dominant and efficient one. If this cause is within the risk covered, the insurer is liable in respect of loss. If it is otherwise, the insurer is not liable.
- **Risk must attach: Premium** is the consideration for the risk run by the insurance companies and if there is no risk, there should be no premium. It is a general principle of law of insurance that where the insurers have never been on the risk, they cannot be said to have earned the premium. Thus, where a policy is declared to be void ab initio or where the policy is avoided before the risk began to run, the assured is entitled to a repayment of the premium that may have been paid. But if once the risk has begun to run the premium cannot be recovered.
- **Mitigation of loss:** When the event insured against occurs it is the duty of the insured to take all such steps to mitigate or minimize the loss as if he was uninsured. The insured should not become negligent or inactive in the event of the occurrence merely because the property which is getting damaged is insured. He must instead act like any uninsured prudent man would act under similar circumstances. But this does not mean that while doing his best for the insurer he should risk his own life.
- **Subrogation:** The term subrogation literally means substitution i.e., substitution of the insurer in place of the insured in respect of the latter's rights and remedies. According to the principle of subrogation, the insurer who has agreed to indemnify the assured will on making good the loss, be entitled to step into the shoes of assured, i.e. the rights of the assured pass on to the insurer. The doctrine of subrogation is a corollary of the principle of indemnity and as such this principle does not apply to personal assurance. The right of the insurer to be subrogated arises only after the payment of the policy money.
- **Contribution:** There is nothing in law to prevent a person from effecting two or more insurances in respect of the same right to recover more than the full amount of his actual loss. If he recovers the full amount of the actual loss from one insurer, he will have no right to obtain further payment from the other insurers. In such a case, the principle of contribution will apply according to which the insurer who has paid the insured the full amount of compensation will recover the proportionate contribution from the other insurer.

(ii) **From the case study above explain the two main principles of insurance that are of concern to UPA Insurance.**

Answer

- **Causa proxima:** Under the law of insurance an insured can recover from the insurer for the loss of the subject matter only if it is caused by an event insured. If there is only one cause of damage or loss, there is no difficulty in fixing the liability of the insurer. But sometimes the loss or damage results on account of a series of causes. In such a case, the principle of causa proxima

is applied. By the term proximate cause is not meant the latest, i.e., proximate in time, but the direct, dominant and efficient one. If this cause is within the risk covered, the insurer is liable in respect of loss. If it is otherwise, the insurer is not liable. Proximate cause is the cause which sets other causes in motion. It is often the earliest in point of time. Where there is insurance against fire, loss caused by smoke arising out of the fire or damage caused by water escaping from pipes, melted in the course of fire is covered by the policy. In such cases the connection between the fire and the loss is so close that the relation of cause and effect is established.

- **Mitigation of loss:** When the event insured against occurs it is the duty of the insured to take all such steps to mitigate or minimize the loss as if he was uninsured. The insured should not become negligent or inactive in the event of the occurrence merely because the property which is getting damaged is insured. He must instead act like any uninsured prudent man would act under similar circumstances. But this does not mean that while doing his best for the insurer he should risk his own life.

(b)(i) Mention any three types of negotiable instruments and explain any three characteristics of negotiable instruments.

Answer

- Bill of exchange
- Promissory note
- Cheque

Characteristics of negotiable instruments

- **A negotiable instrument is freely transferable.** Usually, when we transfer any property to somebody, we are required to make a transfer deed, get it registered, pay stamp duty, etc. But, such formalities are not required while transferring a negotiable instrument. The ownership is changed by mere delivery (when payable to the bearer) or by valid endorsement and delivery (when payable to order).
- **Negotiability confers absolute and good title on the transferee.** It means that a person who receives a negotiable instrument has a clear and undisputable title to the instrument. However, the title of the receiver will be absolute, only if he has got the instrument in good faith and for a consideration
- **A negotiable instrument must be in writing.** This includes handwriting, typing, computer printout and engraving, etc.
- **In every negotiable instrument there must be an unconditional order or promise for payment.**
- **The instrument must involve payment of a certain sum of money only and nothing else.** For example, one cannot make a promissory note on assets, securities, or goods.
- **The time of payment must be certain.** It means that the instrument must be payable at a time which is certain to arrive. If the time is mentioned as ‘when convenient’ it is not a

negotiable instrument. However, if the time of payment is linked to the death of a person, it is nevertheless a negotiable instrument as death is certain, though the time thereof is not.

- **The payee must be a certain person.** It means that the person in whose favor the instrument is made must be named or described with reasonable certainty. The term ‘person’ includes individual, body corporate, trade unions, even secretary, director or chairman of an institution. The payee can also be more than one person.
- **A negotiable instrument must bear the signature of its maker.** Without the signature of the drawer or the maker, the instrument shall not be a valid one.
- **Delivery of the instrument is essential.** Any negotiable instrument like a cheque or a promissory note is not complete till it is delivered to its payee. For example, you may issue a cheque in your brother’s name but it is not a negotiable instrument till it is given to your brother.

(ii) How does a negotiable instrument differ from a contract?

Answer

- A negotiable instrument is not a contract, as contract formation requires an offer, acceptance, and consideration, none of which is an element of a negotiable instrument.
- Unlike ordinary contract documents, the right to the performance of a negotiable instrument is linked to the possession of the document itself (with certain exceptions such as loss or theft).
- The rights of the payee (or holder in due course) are better than those provided by ordinary contracts as follows:
 - The rights to payment are not subject to set-off, and do not rely on the validity of the underlying contract giving rise to the debt (for example if a cheque was drawn for payment for goods delivered but defective, the drawer is still liable on the cheque)
 - No notice needs to be given to any prior party liable on the instrument for transfer of the rights under the instrument by negotiation
 - Transfer free of equities—the holder in due course can hold better title than the party he obtains it from
 - Negotiation enables the transferee to become the party to the contract, and to enforce the contract in his own name. Negotiation can be effected by endorsement and delivery (order instruments), or by delivery alone (bearer instruments). In addition, it includes the rule of a derivative title which does not allow a property owner to transfer rights in a piece of property greater than his own.

(iii) Explain any two differences between a promissory note and a cheque.

Answer

- A promissory note is drawn by anyone while a cheque is drawn only on a banker.
- There are two parties in a promissory note namely the debtor namely the maker and the payee while there three parties namely the drawer, the drawee and the payee
- A promissory note is made by the debtor while a cheque is only drawn on a banker

- In a promissory note the amount is payable as per promise or earlier while the amount in a cheque is always payable on demand
- A promissory note is always open for negotiability but a cheque can be crossed to end its negotiability

END OF MARKING GUIDE AND MODEL ANSWERS